

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

AUG 15 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations
(Avalon, California)

)
)
)
)
)
)

MB Docket No. 02-223
RM-10520

To: Chief,
Video Division
Media Bureau

**JOINT COMMENTS OF COAST COMMUNITY COLLEGE DISTRICT AND
COSTA DE ORO TELEVISION, INC.**

In these joint comments, Coast Community College District (CCCD), licensee of noncommercial educational analog Station KOCE-TV (Channel 50), Huntington Beach, CA, and permittee for noncommercial educational digital Station KOCE-DT (Channel 48), also Huntington Beach, CA, and Costa de Oro Television, Inc. ("Costa"), the licensee of commercial Station KJLA (Channel 57), Ventura, CA, and applicant for a construction permit for a paired DTV Station KJLA-DT to operate on Channel 49, address the Commission's *Notice of Proposed Rule Making*¹ in the above-captioned proceeding. The Commission instituted this proceeding in response to a July 3, 2002, Petition for Rule Making ("Petition") filed by Pappas Southern

¹ *Notice of Proposed Rule Making* ("Notice") in MB Docket No. 02-223, DA 02-1938, released August 7, 2002.

No. of Copies rec'd
List ABCDE

0+4

California License, LLC (“Pappas”), licensee of Station KAZA-TV (Channel 54), Avalon, CA, seeking allotment of Channel 47 at Avalon as a “paired channel” for digital broadcasting.

The Petition was submitted pursuant to the relevant provisions of the Public Health, Security, and Bioterrorism Preparedness and Response Act of 2002 (Public Law No. 07-188, 116 Stat. 594 (2002); hereinafter “the Act”). By the instant proceeding, the Commission asks whether the allotment proposal embodied in the *Notice* would comply with the relevant portions of the Act and also be consistent with notions of interference protection and rational communications policy.

As explained by the Commission in the *Notice*, the terms of Section 531 of the Act result in Pappas being eligible for a DTV allotment. The Act requires that such an allotment, now being requested by Pappas pursuant to the procedural requirements of the Act, be made by the Commission on or before September 10, 2002. Significantly, the terms of the Act also require that any such allotment be made only if it would be consistent with the Commission’s rules and that such a new allotment would not require any further modification of the Commission’s analog or DTV Tables of Allotments. These Joint Comments of CCCD and Costa address the compliance of the Commission’s allotment proposals in the instant proceeding with these fundamental terms of the Act.

The Commission proposes allotment of Channel 47 for use by KAZA-DT on Mt. Wilson, the common antenna site for nearly all of the Los Angeles market television stations. KOCE-DT, has a final and unappealable construction permit (File No. BPEDT-19991101AKY), granted on August 30, 2001, to operate its paired Channel 48, the immediately adjacent channel from the

Channel 47 digital allotment now being considered for KAZA-DT. The allotment site for the KOCE-DT operation is La Habra Heights, CA, the site at which KOCE-TV's analog facilities long have been located.

As is obvious, a full-service Channel 47 operation for KAZA-DT at Mt. Wilson would result in massive and intolerable interference to Station KOCE-DT operating from La Habra Heights – interference that would not be permissible under the Commission's Rules and, also, the terms of the Act. Correspondingly, protection of KOCE-DT at La Habra Heights by a station on Channel 47 at Mt. Wilson would require the station to employ a severely limited power output that, according to Pappas, would be on the order of eleven kilowatts – a power level that would not even allow KAZA-DT to provide the requisite signal strength over Avalon, its community of license.² However, and as acknowledged by the Commission in paragraph five of the *Notice*, the above-referenced construction permit for KOCE-DT provides for the operation of the station from Mt. Wilson, rather than La Habra Heights. Also, and as will be further explained below, the KOCE-DT facility on Mt. Wilson intends to employ an antenna system to be shared by six other analog and digital stations.

Operation of KOCE-DT from Mt. Wilson would eliminate the interference from KAZA-DT, in that the two adjacent channel stations would be collocated. Under existing FCC rules and policies, however, the Commission must “protect” the KOCE-DT La Habra Heights allotment site (and the Mt. Wilson construction permit site) until such time that KOCE-DT were to begin operation from Mt. Wilson. KOCE-DT's permit is subject to the May 1, 2003, buildout deadline applicable to all noncommercial, educational permittees.

²See Pappas Petition for Rule Making, at 9.

In the *Notice* the Commission referred to its customary policy that “processing petitions for rule making which would rely on other events by third parties to effect the compliance of the proposal with the separation requirements is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the administrative resources” of the Commission.³ However, in light of the constraints imposed on the Commission by the terms of the Act, the FCC proposes to “waive” this “processing standard” because “...Pappas represents that the licensee of KOCE-TV has indicated that it intends to proceed with the construction of KOCE-DT’s facilities on Mount Wilson in accordance with the terms of its construction permit.”⁴ Absent the requirement for such protection to the La Habra Heights DTV allotment site, or after waiver thereof, the Commission could allot adjacent channel Station KAZA-DT and allow it to operate from Mt. Wilson – thus complying with the terms of the Act.

Clearly, CCCD “intends” to operate its digital KOCE-DT facility from Mt. Wilson. However, the ability of CCCD to operate KOCE-DT from its construction permit site efficiently and in conformance with the Commission’s interference protection rules is premised on adjacent Channel 49 Station KJLA-DT (to be sharing the common antenna with KOCE-DT and several others stations, as discussed below) obtaining a construction permit and actually using this site on Mt. Wilson, in conjunction with KOCE-DT.

The KJLA-DT matter involves the same kind of adjacent channel interference that would be resolvable were KAZA-DT to be collocated with KOCE-DT on Mt. Wilson. Costa, the

³ The *Notice* cites *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cut and Shoot, Texas)*, 11 FCC Rcd 16383 (1996) as precedent for this policy on processing petitions for rule making.

⁴ See *Notice, supra* note 1, at paragraph five.

licensee of analog Station KJLA, Ventura, CA, was assigned paired Channel 49 for DTV operation – one channel removed from the KOCE-DT Channel 48. The allotment site for the KJLA DTV facility is South Mountain in Santa Paula, CA, the site of the KJLA analog transmission facility on Channel 57. Operation of Station KJLA-DT, Channel 49, from the South Mountain site would create intolerable interference to the adjacent Channel 48 KOCE-DT Mt. Wilson operation now authorized by construction permit. As a result, Costa applied (File No. BPCDT-19991101AFT) for a construction permit to share the Mt. Wilson common antenna with KOCE-DT, KOCE-TV (which soon will be filing a construction permit for Mt. Wilson relocation of transmitter facilities) and four other stations. The digital application of Station KJLA-DT has been coordinated with that of KOCE-DT (granted on August 30, 2001) and also with that of KXLA-DT (BPCDT - 19991101AIZ; also granted on August 30, 2001, to KXLA analog licensee Rancho Palos Verdes Broadcasters, Inc.). (These stations, along with the Golden Orange Broadcasting Co., licensee of Station KDOC-TV and permittee of Station KDOC-DT, are the partners in the common antenna project.)

Once the Commission has granted not only the KOCE-DT construction permit but also the interrelated KJLA-DT construction permit (both specifying collocation at Mt. Wilson), KOCE-TV would be in a position to state that it waives its rights to protection of its digital allotment site at La Habra Heights. Such a waiver, of course, is premised on Costa's intent to build and operate from Mt. Wilson and also on the Commission ensuring that both KOCE-DT and KJLA-DT will be allowed to construct, operate and be licensed under the terms of the two stations' construction permits.

Thus, on these premises, both CCCD and Costa would not object to the Commission's rulemaking proposal advanced in the instant proceeding.

Respectfully submitted,

BOARD OF TRUSTEES OF THE COAST
COMMUNITY COLLEGE DISTRICT

By:



Barry D. Umansky
John C. Butcher
Thompson Hine LLP
1920 N Street, NW
Washington, D.C. 20036
(202) 331-8800

COSTA DE ORO TELEVISION, INC.

By:




Barry A. Friedman
John C. Butcher
Thompson Hine LLP
1920 N Street, NW
Washington, D.C. 20036
(202) 331-8800

August 15, 2002

CERTIFICATE OF SERVICE
(Hand Delivery)

I, Pamela D. Plummer, a secretary at the law firm of Thompson Hine LLP, do hereby certify that on this 15th day of August, 2002, I have caused to be delivered, by hand, a copy of the foregoing "Joint Comments of Coast Community College District and Costa de Oro Television, Inc." to the following:

John Griffith Johnson, Jr., Esq.
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
Counsel for Pappas Southern California License, LLC


Pamela D. Plummer